

Claimant contends he aggravated his neck and upper extremities as a result of his physically demanding work activities. Further, claimant argues respondent and its insurance carrier have not presented any evidence to contradict claimant's evidence. Claimant requests the Board to affirm the Order.

The only issue before the Board on this appeal is whether claimant sustained accidental injury arising out of and in the course of his employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds and concludes the Order for Compensation should be affirmed.

Claimant began working for respondent as a package car driver in 1991. Before commencing employment with respondent he had no neck or cervical problems.

Claimant has a history of neck and/or upper extremity problems while working for respondent. In 1993, claimant hit his head on his truck. During conservative treatment for his neck after that incident, an MRI revealed cervical disc herniation. Claimant settled a claim for the 1993 incident and he returned to work without restrictions and without surgical intervention after being off work for approximately two or two-and-one-half months. In October 1995 he experienced severe neck pain, which caused him to seek additional medical treatment. Again, claimant returned to work without restrictions after being off work for approximately one week. And in 2003, a coworker fell on claimant. After that incident, claimant received injections for his neck. And again, after being off work for approximately two months, claimant returned to work without restrictions.

Beginning in December 2005, claimant experienced increased neck and upper extremity pain that he attributed to the lifting and driving he did for respondent. Claimant made anywhere from 150 to 250 stops per day and the packages he handled weighed anywhere from an ounce to 150 pounds. Claimant's delivery truck did not have power steering and the truck jarred or bounced on his routes on country roads. Other factors in claimant's driving for respondent that exacerbated his neck and arm symptoms include looking at every intersection, looking over his shoulder, and looking at the camera mounted on the truck ceiling that is used when backing up the truck.

After reporting his neck and arm problems to respondent, claimant sought care from his personal physician, who recommended claimant see orthopedic surgeon Dr. Sean A. Cupp. Claimant saw Dr. Cupp in August 2006. At that time, claimant was having pain that radiated down both arms and his hands were going numb. Dr. Cupp prescribed medication and ordered an MRI of claimant's neck.

Claimant testified the symptoms he discussed with Dr. Cupp in August 2006 were different than what he experienced in 1993, 1995 and 2003 as back then he did not have numbness in his fingers and the pain was only in one arm, whereas now he was experiencing symptoms in his fingers and in both arms.

After his August 2006 visit with Dr. Cupp, claimant continued working for respondent, performing his regular job. On October 27, 2006, respondent sent claimant to see Dr. Diana Carver for his bilateral arm problems. Claimant last performed physical work for respondent on October 26, 2006. Claimant described the progression of his symptoms by October 26, 2006, as follows:

[E]very day it just kept getting worse and worse as I drove through -- especially throughout the day, it just kept getting worse when I was out [in] the country. And my arms would get to hurting so bad holding them up driving that I would pull over just about every day and I would have to rest my arms. And then by the end of the day my neck hurt so bad and radiating down both arms that I couldn't stand it. I would tell my boss every day when I would come in that it was hurting.<sup>1</sup>

As noted above, on October 27, 2006, claimant saw Dr. Carver, who prescribed medications and took claimant off work. Since his visit with Dr. Carver in October 2006, claimant has seen or attempted to see other physicians relative to his neck and upper extremity problems, including a return visit to Dr. Cupp in November 2006. After examining claimant and reviewing the MRI he had ordered, Dr. Cupp diagnosed neck, shoulder and arm pain with cervical radiculopathy secondary to herniated discs at C5-6 and C6-7. In reviewing the MRI, the doctor noted the MRI revealed degenerative disc disease at C5-6 and C6-7, the right paracentral disc protrusion at C5-6 appeared to be somewhat smaller than a 2003 study, and claimant now had a broad-based disc bulge at C6-7 which showed no stenosis on the images. Dr. Cupp referred claimant to Dr. Harold A. Hess, who discussed with claimant the options of an anterior cervical discectomy at the C5-6 and C6-7 levels and an artificial cervical disc trial.

At this juncture, there is no evidence to establish that claimant's present symptoms are from the natural aging process or day-to-day activities. Conversely, claimant's work activities are very physically demanding.

The undersigned Board Member concludes claimant has proven he injured or aggravated his neck and upper extremities while working for respondent through approximately October 27, 2006, the date the authorized physician took claimant off work. As a delivery driver for respondent, claimant repetitively lifted and handled packages, some weighing as much as 150 pounds, and the driving for respondent that claimant did entailed driving without power steering, experiencing jarring or bouncing, and turning or moving his neck in various positions while driving and maneuvering the truck. The February 19, 2007, Order for Compensation should be affirmed.

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<sup>1</sup> P.H. Trans. at 19, 20.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>2</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**WHEREFORE**, the February 19, 2007, Order for Compensation entered by Judge Avery is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April, 2007.

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BOARD MEMBER

c: John M. Ostrowski, Attorney for Claimant  
Stephanie Warmund, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge

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<sup>2</sup> K.S.A. 44-534a.